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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

UNIVERSAL AIR ACADEMY, Plaintiff and Appellant, v. AMERICAN AIRPORTS CORPORATION, Defendant and Respondent.	B267164 (Los Angeles County Super. Ct. No. BC510022)

APPEAL from a judgment of the Superior Court of Los Angeles County. Randolph M. Hammock, Judge. Affirmed.

The Mathews Law Firm, Charles T. Mathews and Beverly Bickel for Plaintiff and Appellant.

Cunningham Swaim, Michael J. Terhar, Steven D. Sanfelippo, Kathy Schmeckpeper, and Jonathan E. Hembree for Defendant and Respondent.

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A flight school owned by two Iranian-American brothers and operating out of two regional airports in Los Angeles County sued the company managing those airports for racial and national origin discrimination under the Unruh Civil Rights Act, Civil Code section 51 et seq.[1] The trial court granted summary judgment to the management company, reasoning that the flight school had not adduced sufficient evidence to raise an inference of intentional discrimination on the basis of race or national origin. We independently conclude that this ruling was correct, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

The County of Los Angeles (County) owns several regional airports, including the El Monte Airport (in El Monte) and Brackett Field Airport (in La Verne). The County has contracted management of these airports to defendant American Airports Corporation (American), subject to County oversight.

Alex and Majid Khatib (collectively, the Khatibs) are brothers who co-own two sister businesses: (1) plaintiff Universal Aviators Academy, Inc. (Universal), which operates a flight school under the name Universal Air Academy; and (2) non-party UAA International, which operates a full-service business offering fuel, rental cars and other services to private aircraft making stopovers and which does so under the name Billion Air Aviation (Billion Air). Universal is no small concern; it is the largest consumer of airplane fuel at the El Monte Airport.

Universal has operated at the El Monte Airport since 1993. In 2004, Universal entered into a five-year lease directly with the County to lease space on the airport's grounds. In 2009, Universal exercised its option to renew the lease for five more years. In 2014, the lease converted to a month-to-month tenancy. In 2011, Billion Air starting renting space at the El Monte Airport by taking over a lease from Lightning Aircraft Corporation (Lightning).

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[1] All further statutory references are to the Civil Code unless otherwise indicated.

II. Procedural History

In May 2012, Universal—but not Billion Air or the Khatibs—sued American. In the operative first amended complaint (FAC), Universal alleged a single claim for racial and national origin discrimination in violation of the Unruh Act.[2] The Khatibs are Persian and from Iran. Although Majid does not specifically recall discussing his race or national origin with any employee of American, Alex recalls such discussions and both brothers state that they bring up their race and national origin in nearly every conversation they have.[3] Majid asserted in his declaration that he and Alex are the only Persian tenants at the El Monte Airport, but he and Alex simultaneously admitted in their depositions that they do not know all of the other tenants or their national origins. In the FAC, the Khatibs generally allege that American began treating them differently after the events of September 11, 2001, and specifically allege 18 different incidents of perceived racial or national origin discrimination spanning a 12-year period that includes events prior to September 11, 2001.

American moved for summary judgment. Following briefing and argument, the trial court granted American's motion. The court sided with Universal in holding that corporations have standing to bring an Unruh Act claim and in rejecting American's argument that Universal's single cause of action was functionally 18 different causes of action, some of which were time-barred. However, the court agreed with American that there were no triable issues of material fact. Applying the three-step, burden-shifting mechanism set forth in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 (*McDonnell Douglas*) for evaluating evidence of discriminatory intent,

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[2] Universal's initial complaint also included claims for (1) intentional interference with contractual relations, (2) intentional interference with a prospective economic advantage, (3) intentional infliction of emotional distress, (4) breach of oral contract, and (5) breach of the covenant of good faith and fair dealing.

[3] Because they share the same last name, we use the Khatibs' first names. We mean no disrespect.

the court found that Universal had not adduced sufficient evidence (1) to establish a prima facie case of intentional discrimination (*McDonnell Douglas'*s first step), or (2) to rebut the legitimate, nondiscriminatory reasons American proffered for its allegedly discriminatory acts (its third step). More specifically, the court noted that no American employee had ever made a "disparaging comment, statement or remark about the national origin" of Universal's owners. Thus, Universal's sole evidence of intent was its request that the court infer American's intent to discriminate on the basis of race and national origin from the fact that American had subjected Universal, but no other airport tenant, to the "'list of [18] grievances' [set forth in the FAC], amassed over [several years], including alleged price charging differences for rent and gas, lack of free lighting, unwarranted complaints for noise and other types of violations." The court declined to draw that inference, finding that it was not reasonable and "pure[ly] speculat[ive]" in light of the evidence presented.

After the trial court entered judgment, Universal filed this timely appeal.

DISCUSSION

Universal challenges the trial court's grant of summary judgment.

I. Relevant Law

The Unruh Act (Act) creates a civil cause of action for anyone who is "denied the right" to "full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever" on the basis of "their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status." (§§ 51, subd. (b) & 52.) Except for claims under the Act grounded in violations of the federal Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Act requires proof of "'*intentional* acts of discrimination'" on any of the bases it specifies as prohibited; disparate impact alone will not suffice. (*Koebke v. Bernardo Heights County Club* (2005) 36 Cal.4th 824, 853-854 (*Koebke*); *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1175, superseded on other grounds by § 51, subd. (f); *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1502 ["[t]he Act prohibits arbitrary

discrimination by businesses *on the basis of specified classifications*"], italics added; cf. *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 670 [disparate impact claims are available for Unruh Act claims based on disability discrimination pursuant to section 51, subdivision (f)].)

To "'sharpen[] the inquiry into the elusive factual question of intentional discrimination' [citation]" in employment cases (*St. Mary's Honor Center v. Hicks* (1993) 509 U.S. 502, 506), the United States Supreme Court developed a three-step, burden-shifting mechanism in *McDonnell Douglas*, *supra*, 411 U.S. 792. Because discriminatory intent is as difficult to prove in Unruh Act cases as it is in employment discrimination cases, we will take the lead from other courts and apply *McDonnell Douglas* to the Unruh Act as well. (*Lindsey v. SLT Los Angeles, LLC* (9th Cir. 2006) 447 F.3d 1138, 1144-1145; *Simonelli v. Univ. of Cal.-Berkeley* (N.D.Cal., Nov. 15, 2007, No. C 02-1107 JL) 2007 U.S.Dist. Lexis 86952, pp. 3-4 (*Simonelli*); *Trigueros v. Southwest Airlines* (S.D.Cal., Aug. 30, 2007, No. 05-CV-2256-L(AJB)) 2007 U.S.Dist. Lexis 64234, pp. 9-10.)

Tailored to the Unruh Act, a plaintiff bringing a claim under that Act bears the initial burden of producing evidence establishing a prima facie case of intentional discrimination. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354-355 (*Guz*).) To make out a prima facie case, the plaintiff must prove that (1) the defendant "discriminated or made a distinction that denied full and equal accommodations" as proscribed by the Act; (2) the defendant's "motivating" or "substantial motivating reason" for its conduct was "its perception" that the plaintiff possessed one or more of the characteristics protected by the Act; (3) the plaintiff was harmed; and (4) the defendant's "conduct was a substantial factor in causing [the plaintiff's] harm." (CACI No. 3060; Cheng et al., Cal. Fair Housing and Public Accommodations (The Rutter Group 2015) § 12:3 [in absence of published cases setting forth these elements, looking to CACI Instruction for articulation of elements].) If this prima facie showing is made, the defendant has the burden of producing evidence indicating that it had a legitimate, nondiscriminatory reason for its treatment of the plaintiff. (*Guz*, at pp. 355-356.) "A reason is 'legitimate' if it is '*facially unrelated to prohibited bias*, and which, if true, would thus preclude a finding *of discrimination*.'" (*Reid v. Google, Inc.* (2010) 50 Cal.4th

512, 520, fn. 2, quoting *Guz*, at p. 358.) If the defendant carries this burden, then the plaintiff then bears the ultimate burden of proving that the defendant's proffered reasons are a smokescreen or pretext for its "intentional discrimination based on [an] impermissible motive." (*Simonelli*, *supra*, 2007 U.S.Dist. Lexis 86952, at p. 4; *Guz*, at p. 356.)

The *McDonnell Douglas* burden-shifting mechanism works differently where, as here, a court is evaluating a motion for summary judgment. (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 861 (*Serri*).) Summary judgment functions to separate the cases worth "'the time and cost of factfinding by trial'" from those that are not. (*Id.* at p. 859.) A case warrants trial (and the denial of summary judgment) only when it presents a "genuine" or "triable" issue of fact—that is, when "the evidence would allow a reasonable trier of fact to find . . . in favor of the party opposing the [summary judgment] motion" (rather than be subject to resolution by the court as a matter of law). (*Id.* at pp. 859-860, citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845; Code Civ. Proc., § 437c, subd. (c).)

Consistent with the screening function of summary judgment, it is the Unruh Act defendant—as the party seeking to avoid trial—who bears the burden of disproving an element of the plaintiff's prima facie case or adducing evidence to support a legitimate, nondiscriminatory reason for its allegedly discriminatory acts. (*Serri*, *supra*, 226 Cal.App.4th at p. 861; Code Civ. Proc., § 437c, subds. (a) & (o)(2).) Then and only then does the burden shift to the plaintiff to "'produc[e] substantial evidence that the [defendant's] stated reasons were untrue or pretextual, or that the [defendant] acted with a discriminatory *animus*, such that a reasonable trier of fact could conclude that the [defendant] engaged in intentional discrimination . . . .' [Citation.]" (*Serri*, at p. 861; see also *Guz*, *supra*, 24 Cal.4th at p. 357.) The plaintiff's proffered evidence must "'permit a rational inference that the [defendant's] actual motive was discriminatory.'" (*Serri*, at pp. 861-862, quoting *Guz*, at p. 361.) That evidence must be "'specific' and 'substantial'" (*Batarse v. Service Employees Internat. Union, Local 1000* (2012) 209 Cal.App.4th 820, 834 (*Batarse*)), and sufficiently robust to sustain a reasoned inference in the plaintiff's favor based on more than mere speculation, conjecture, or fantasy (*Cheal v. El Camino Hospital* (2014) 223 Cal.App.4th 736, 741 (*Cheal*);

McGrory v. Applied Signal Technology, Inc. (2013) 212 Cal.App.4th 1510, 1529 (*McGrory*)).

We review a summary judgment ruling independently, without regard to the trial court's conclusions or its reasoning. (*Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 455 (*Minish*).) We may not weigh conflicting evidence or assess the credibility of witnesses (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 319), and must resolve any doubts against summary judgment and in favor of trial (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 415).

II. Analysis

As detailed above, an Unruh Act plaintiff seeking to stave off summary judgment must ultimately produce specific and substantial evidence to support a reasonable inference that the defendant intentionally discriminated against it on the basis of an impermissible motive—in this case, the Khatib brothers' and, ostensibly by extension, Universal's race and national origin. (*Serri*, *supra*, 226 Cal.App.4th at p. 861; *Batarse*, *supra*, 209 Cal.App.4th at p. 834; CACI No. 3060; § 51, subd. (b).)

A defendant's motive and intent to discriminate on the basis of race or national origin may be proven in a number of ways. These include: (1) a defendant's overt expressions of racial or national origin bias; (2) statistical analyses of the impact of the defendant's acts, which may give rise to an inference of discriminatory intent (*Everett v. Superior Court* (2002) 104 Cal.App.4th 388, 392-393); (3) specific instances of the defendant treating the plaintiff differently from others who are similarly situated, which may give rise to an inference of discriminatory intent (*McGrory*, *supra*, 212 Cal.App.4th at p. 1535; *Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 172 (*Wills*); see also *Department of Fair Employment & Housing v. Superior Court* (2002) 99 Cal.App.4th 896, 902 [same, under Fair Employment and Housing Act]); and (4) so-called "me, too" evidence, which are specific instances of the defendant intentionally discriminating against others on the basis of race or national origin (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 114).

In this case, Universal does not rely on the first two types of evidence. Universal does not rely on any overt statements evincing discriminatory bias

because the Khatibs admit that most of American's employees exhibited no racial or national origin prejudice at all, and the rest never made any statements to that effect, either to the Khatibs or anyone else. Universal also disavows any reliance on statistical analysis. Thus, we will examine whether the specific instances and "me too" evidence Universal relies upon give rise to a reasonable inference that American discriminated against it on the basis of the Khatibs' race or national origin.

A. Specific instances of conduct by American

The 18 specific instances Universal alleges in its brief can be consolidated into 15 instances, which fall into four distinct categories. Universal suggests that we need not delve too deeply into whether the other airport tenants that American is alleged to have treated more favorably are similarly situated to Universal because it is enough that Universal and those other tenants are "airport-related businesses renting space" from the County "at the same airport at the same time." We disagree. A defendant's decision to treat a plaintiff differently from others only contributes to an inference of impermissible discriminatory intent if the plaintiff and others are in the "same" situation; if they are not, the differential treatment reflects no more than their different situations. (See *Wills*, *supra*, 195 Cal.App.4th at p. 172 ["[a]nother employee is similarly situated if, among other things, he or she "'engaged in the same conduct without any mitigating or distinguishing circumstances'"].)

1. Pricing

a. Lease pricing

Universal is paying $0.88 per square foot for the office and hanger space it is leasing at the El Monte Airport under the lease it negotiated in 2004 and renewed in 2009. When Billion Air assumed Lightning's lease at the El Monte Airport in 2011, the Khatibs calculated that Lightning was paying $0.40 per square foot for its office and hanger space under the lease Lightning had negotiated in 2008. Also in 2009, the Khatibs calculated that American had leased hanger and office space to L.A. Flight Center at the El Monte Airport at a rate of $0.60 per square foot.

The differential in price-per-square-foot does not contribute to any inference of improper discrimination because Universal, Lightning and L.A.

Flight Center were not in the same situation at the times those prices were set. The terms of each lease at the El Monte Airport are negotiated on a lease-by-lease basis, and the price-per-square-foot is affected both by the fair market value of airport rentals at the time of negotiation and by the potential for "bidding wars" when more than one prospective tenant wants the same space. As Universal has acknowledged, not all locations on an airport's premises are equally visible to possible customers; this can also influence the price. Because Universal has not adduced evidence that the fair market values of airport rentals were the same in 2004 and 2009, that there was similar competition for all three spaces during those time periods, or that the three spaces are of similar accessibility to customers, Universal has not established that the different rental rates are anything more than the product of different leases negotiated at different times by different people under different market conditions. What is more, Universal frankly acknowledged that the American employee who negotiated its 2004 lease was *not* biased against the Khatibs on the basis of their race or national origin.

b. Fuel pricing

Universal is eligible to receive a "bulk-quantity" rebate on the aviation fuel it purchases at the El Monte Airport once it purchases 3,500 gallons per month and makes payment by check. Once Billion Air assumed the Lightning lease, the Khatibs learned that Lightning had negotiated a fuel discount as part of its lease—it would receive a $0.02 discount for every gallon of fuel it purchased and a $0.10 discount for every gallon over 500 gallons if it paid for the gas in advance by credit card.

Universal complains that the different fuel prices and different methods of payment (check versus credit card) provide evidence of American's discriminatory intent. They do not. It is undisputed that the County's regional airports offer several different fuel rebate or fuel discount programs, and that they are set by the County—not by American. It is also undisputed that Lightning's discount was part of its separately negotiated lease, and that American continued to honor that discount once Billion Air assumed Lightning's lease. Universal argues that it makes no sense for American not to offer its biggest fuel consumer its biggest discount with the easiest method of payment (credit card), but this ignores that American has an incentive to

turn a profit and ignores that Lightning's discount was the product of separate negotiations.

c. Tie downs

"Tie downs" are concrete blocks with a hook embedded into the top; persons parking an aircraft outside of a hangar can chain their craft to the hooks to prevent the craft from moving in stronger winds. Universal argues that American was subjecting it to unequal treatment with respect to charges for tie downs at El Monte Airport and at Brackett Field.

El Monte Airport. When Universal first started its sublease in 1997, the sublessor had an agreement with American's predecessor to allow it a certain number of free tie downs spaces in Rows 20 and 21 on the El Monte Airport tarmac. At some point after American took over management of the El Monte Airport in 2000, one of American's representatives toured Universal's space, saw planes tied down in Rows 20 and 21, and did not object; from this, Majid inferred that he had a "mutual understanding"—which Majid alternatively characterized as an "oral agreement"—with American that Universal could continue to use the tie downs in Rows 20 and 21 for free. In 2004, Universal negotiated its own contract with the County but did not negotiate for any tie downs. That lease further provided (1) that it constituted the sum total of all agreements between the parties and thereby precluded any oral agreements, and (2) that the County could charge fees for other services. In 2007, American repaved the tarmac and declined to reinstall tie downs in Rows 20 and 21 unless Universal agreed to pay for their use. Universal moved its planes for several years, but then returned them to Rows 20 and 21—but without tie downs—on the advice of their counsel on November 30, 2011. The next day, a windstorm hit and some of the untethered aircraft were jostled against one another and damaged.

Brackett Field. Since 2009, American has charged Universal $52 per month for each tie down at Brackett Field, but charged L.A. Flight Center only $30 per month for each tie down at the El Monte Airport. When Universal inquired about the price differential, American offered to give Universal the same $30 per month price for its tie downs at Brackett Field if it paid for a year in advance.

The price Universal is paying (or is being asked to pay) for tie downs at each airport does not supply evidence of discriminatory intent. Universal is not entitled to free tie downs at the El Monte Airport by the plain and undisputed terms of its own lease, and it has not proven that any other tenant is getting tie downs for free in the absence of a lease term so providing. Universal was also given the opportunity to get a $30 per month rate for tie downs at Brackett Field, and has not proven that the other tenants getting the cheaper rate at either airport were able to do so without also paying for a year in advance.

2. Landlord / tenant issues

a. Ramp lighting

American installed outdoor lighting for the ramps used by other tenants at the El Monte Airport free of charge, but eventually only installed "very cheap" lighting for Universal's ramps free of charge. It is undisputed that Universal's 2004 lease contains no provision for free lighting, and Universal has not adduced any evidence that the lighting provided to other tenants is not part of their leases. Absent that evidence, Universal and the other tenants are not similarly situated.

b. Switching mailbox number

In 2009, American installed new mailboxes for its tenants at the El Monte Airport. The new mailbox unit had only 12 boxes. As a result, American reassigned Universal—which had been number 13—to number 8. American did not immediately tell Universal of the change, although Universal learned of it within two weeks when one of its employees retrieved the mail. At that time, Universal did not inform its creditors and customers of the change because it was "too much trouble" and because Majid was "going to fight . . . to get [his] box back." This incident does not provide evidence of discriminatory intent because Universal is not similarly situated to the other tenants: The only reason American switched Universal to a new number was because Universal had box number 13, and the new mailbox unit only had 12 boxes.

c. Signage

In 2011, Universal was leasing space from Metrovest Management (Metrovest) just off the premises of Brackett Field and hung two advertising

banners on the outside of Metrovest's building. On November 15, 2011, Metrovest sent a letter to all of its tenants stating: "American Airports has requested that all banners at Brackett Airport be removed. Therefore we must inform all our tenants to remove their banners." Universal complied with its landlord's request. However, this letter does not demonstrate any discriminatory intent by American because it was sent by Metrovest and required all banners to be removed, not just Universal's. Majid testified that some of the other Metrovest tenants were permitted to re-hang banners in 2014, but this was not alleged in the FAC and, more to the point, does not explain how Metrovest's largesse in this regard provides evidence of American's intent.

Although Universal did not so allege in the FAC, Universal also introduced evidence that it placed banners on the fences surrounding Brackett Field in 2005 to 2006, and again in 2008 to 2009, and was asked by American to remove the banners. However, Universal provided no evidence that American did not ask other tenants to do the same.

3. Bidding

a. At El Monte Airport

In early 2009, Alex approached American about leasing vacant space at the El Monte Airport and offered $2,500 per month. American's representative countered with an "asking" price of $4,700 per month for the space in an "as is" condition. The parties dispute what happened next: Alex says he spoke with American's representative orally and he refused to rent the space for less than $4,700, while American's representative said that he never heard back from the Khatibs after sending the letter. American subsequently leased the space to L.A. Flight Center for $4,500 per month and provided a $12,000 rent abatement to allow the new tenant to repaint and re-carpet the space. Majid testified that the owner and "frontman" for L.A. Flight Center's negotiations with American had worked for Universal in the past as an office manager and was of "American Caucasian" national origin, which Majid knew "[b]y looking at him."

This incident provides, at most, very weak evidence of differential treatment. If Alex's testimony is credited, and if we assume that Universal is just as credit-worthy and otherwise qualified for tenancy as L.A. Flight

Center, then American's insistence on a minimum $4,700 is inconsistent with its subsequent decision to rent the space to L.A. Flight Center for $4,500. However, Universal acknowledges that American awards leases to the highest bidder, and the highest offer Universal made for the space was $2,500, which is $2,000 less than the price L.A. Flight Center paid. What is more, American often offers rent abatements (Universal received one in its 2004 lease), and a rent abatement is fully consistent with taking the space in an "as is" condition.

b. At Brackett Field

In 2009, Universal inquired about leasing office space in the terminal at Brackett Field, and American responded that flight schools would not be permitted to lease space in the terminal itself. However, American subsequently leased the space to Global Aviators Academy, a flight school. It is undisputed that Global Aviators Academy is co-owned by a Persian man from Iran who used to receive flight training at Universal. American's decision to lease the space to one Persian-owned company rather than another certainly evinces no discriminatory animus on the basis of race or national origin, and more broadly tends to rebut the notion that American harbors any animus against such individuals. Universal provides no evidence suggesting that American was unaware of the owner's race and national origin.

4. Complaints about Universal's conduct

a. Aircraft noise

American informed Universal on multiple occasions that nearby residents in the community had complained about aircraft noise from its aircraft. As an example, Universal points to a letter American sent on June 6, 2011, identifying a specific helicopter by call number. When Universal wrote back and explained that the helicopter identified in the letter was not in the air that day, American responded with a letter apologizing for the mistaken identity. There is no differential treatment here because American has sent noise complaint letters to other tenants and users of the airport as well.

b. Criticism of flight maneuvers

In 2012, an American employee criticized one of Universal's helicopter pilots for engaging in a flight maneuver. However, that maneuver was ordered by the air traffic control tower and is beyond an airport manager's authority to regulate. Universal contends that it is unaware of any other tenant's pilots being criticized for such matters. Because there is no evidence on this point from American, this constitutes some evidence of differential treatment.

c. False police report

A few weeks after the American employee criticized the Universal pilot's flight maneuver, the airport manager for El Monte Airport—Chris Brooks (Brooks)—went to Universal's space to apologize. Soon thereafter, Brooks called the police to report that Majid had, during that conversation, threatened Brooks and his family; Majid denies ever making such threats. The case was never prosecuted. Although there is certainly a factual dispute over what happened, Brooks's filing of a police report is covered by California's litigation privilege and cannot be the basis for any civil liability other than malicious prosecution. (§ 47, subd. (b); *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 965-966 [litigation privilege applies to police reports]; *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 926-927 [same]; *Devis v. Bank of America* (1998) 65 Cal.App.4th 1002, 1007-1008 [same]; *Williams v. Taylor* (1982) 129 Cal.App.3d 745, 753-754 [same].) Although some—but not all—courts will not apply the privilege to police reports made in bad faith (*Devis*, at p. 1008), there is no evidence aside from Majid's denial of the incident to establish that Brooks's report was false. Moreover, we cannot infer its falsity from the absence of further prosecution because there is no evidence suggesting that the decision to abandon prosecution was based on the merits of the case rather than other reasons. (*Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 893-894.)

d. Parking citation

In March 2012, American issued Alex a parking citation because he illegally parked on Universal's ramp. Alex testified that it "is customary for tenants" to illegally park on their businesses' ramps and that no one else is cited for it. Because American has not provided evidence regarding parking

citations issued to others, Universal's evidence that only Alex received a parking ticket is an incident of disparate treatment.

B. "Me too" evidence involving Billion Air

Universal also points to three incidents of allegedly discriminatory treatment of Billion Air, which if substantiated, can constitute "me, too" evidence showing American's intent to discriminate against Persians from Iran.

1. Letter regarding storm drain pollution

In March 2012, American contacted Billion Air and criticized it for allowing runoff from paint stripping in its hangar to enter the storm drain. Although Majid disavowed knowledge that anyone else received such criticism, it is undisputed that American contacted others for similar transgressions and that many leases—including Universal's 2004 lease—require tenants to have the proper environmental permits before releasing waste into the storm drains. This incident demonstrates no differential treatment.

2. Failure to reinstall ramp without additional County approval

In 2012, American refused to reinstall the ramp Billion Air owns adjacent to its leased space after American removed the ramp for repaving, and justified the refusal by stating that the ramp constituted a tenant improvement necessitating further County approval. However, Universal produced no evidence as to whether other tenants were treated the same way; absent such evidence, this does not constitute proof of differential treatment.

3. Erecting signage that hurts Billion Air's business

In 2012, American put up a sign on the tarmac directing planes to "Transient Parking," and the directional arrows on the sign pointed away from Billion Air's space at the airport. But signs directing arriving planes to transient parking are customary, and the "Transient Parking" sign accurately points to the transient parking area. The fact that Billion Air's building is located away from the area for transient parking does not mean that *American* has done anything wrong.

C. Final analysis

After sifting through the evidence delineated above, Universal has in the end produced evidence that American has treated it differently than

other tenants on three occasions: In 2009, American refused to lease additional space to Universal for less than $4,700 but rented the same space to someone else for $4,500; in 2012, an American employee criticized one of Universal's pilots for making a flight maneuver; and in 2012, an American employee issued an parking citation to Alex.

An incident of differential treatment is proof that the defendant's acts have had a disparate *impact*, but, as explained above, liability under the Act turns on proof of discriminatory *intent*. (*Koebke*, *supra*, 36 Cal.4th at pp. 853-854.) Impact alone is not enough. (*Ibid.*) However, several specific instances of disparate impact can add up to an inference that their root cause was the defendant's impermissible discriminatory intent: Where the incidents are sufficiently numerous and related in scope and time, the inference of impermissible intent is reasonable; where they are not, the inference is unreasonable and speculative.

The evidence in this case falls on the unreasonable side of this line. The three isolated incidents span the 12 years between the time American took over management of the El Monte Airport and Brackett Field and the filing of Universal's lawsuit. They involve one attempt to bid on a space for lease, one unfair criticism about flight maneuvers and a parking citation. This evidence is neither specific nor substantial enough to sustain a reasonable inference of discriminatory intent; any inference of discriminatory intent based solely on this evidence would therefore be grounded in speculation and conjecture. (*Cheal*, *supra*, 223 Cal.App.4th at p. 741; *Batarse*, *supra*, 209 Cal.App.4th at p. 834.) Furthermore, with respect to the unfair criticism and parking citation incidents, Universal did not adduce evidence that the tenants treated more favorably were of a different race or national origin: Aside from Majid's observation that the bidder in the first incident was "American Caucasian," the only evidence in the record of the race, ethnicity, or national origin of the other tenants is Majid's declaration opposing the summary judgment motion that he and Alex are the only Persian tenants at the El Monte Airport, but that declaration contradicts both Khatibs' earlier deposition testimony that they did not know all of the other tenants or their national origins and is accordingly entitled to no weight. (See *Minish*, *supra*, 214 Cal.App.4th at pp. 459-460 [a trial court

may "disregard a party's declaration or affidavit . . . where it and the party's deposition testimony or discovery responses are 'contradictory and mutually exclusive'"].)

The trial court thus acted appropriately in granting summary judgment because American rebutted any prima facie showing of discriminatory intent and Universal failed to present sufficient evidence on the issue of American's discriminatory intent to warrant a trial.

III. Universal's Further Arguments

Universal raises two further categories of arguments in assailing the trial court's ruling.

First, Universal criticizes the trial court for (1) requiring it to prove that American's discriminatory motive was a "substantial motivating factor" for its acts rather than merely a "motivating factor"; (2) citing cases in its written order addressing disparate *impact* when the portion of the Act at issue in this case turns solely on discriminatory *intent*; (3) impermissibly weighing evidence when reviewing American's summary judgment motion; and (4) incorrectly concluding that Universal had not made out a prima facie case of discrimination. All of these arguments are rendered moot by our independent analysis of American's summary judgment motion. Universal's criticisms are unwarranted in any event. Although it is still an open question whether the "substantial motivating factor" test adopted for employment discrimination cases in *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 231-232, applies to cases under the Act (Use Note to CACI No. 3060, ¶ 2), the trial court—like we do—decided the case on the basis of the absence of discriminatory intent, not on the subsequent question of whether that intent was a motivating (or substantially motivating) reason for American's acts. The trial court's order and its oral statements leave no doubt that it was applying the correct legal standards in looking for proof of discriminatory intent and in expressly recognizing that it could not weigh the evidence. And whether or not the court's ruling on the prima facie case is correct, we have independently determined that Universal did not sustain its ultimate burden of proof to avoid summary judgment.

Second, Universal argues that this case is indistinguishable from *Zeinali v. Raytheon Co.* (9th Cir. 2011) 636 F.3d 544. In that case, an Iranian

engineer sued his employer under California's Fair Employment and Housing Act because the employer fired him for not having a security clearance but did not fire other engineers for not having a clearance. (*Id.* at pp. 551-552.) The court ruled that summary judgment was not warranted. (*Id.* at p. 553.) In that case, however, the plaintiff and the other engineers were in the same position but for their national origin and were treated differently with respect to the sole act that formed the basis for liability in the plaintiff's employment discrimination action. For the reasons explained above, Universal did not establish that it was similarly situated to the other airport tenants as to the vast majority of incidents it cites, and the remaining incidents do not give rise to a reasonable inference of discriminatory intent. *Zeinali* is inapt.

American also attacks the trial court's rulings that Universal, as a corporation, has standing to assert an Unruh Act claim; that the FAC raises only one cause of action; and that the sole cause of action is timely. In light of our decision on the merits of American's summary judgment motion, we need not reach these possible alternative bases for affirmance.

DISPOSITION

The judgment is affirmed. American is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST